

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODOLFO MONTER HERNANDEZ, individually and on
behalf others similarly situated,

19-cv-01257-ALC

-against-

**ANSWER TO FIRST
AMENDED COMPLAINT
WITH CROSS-CLAIM**

99 THAI PLAYGROUND LLC (D/B/A THAIMEE TABLE
(F/K/A NGAM)), INSPIRED HOSPITALITY MANAGEMENT
LLC (D/B/A THAIMEE TABLE (F/K/A NGAM)),
NGAMPROM THAIMEE (AKA HONG), MATT BRUCK,
ANDREW PIRGOUSIS, CHAI THAIMEE, and LUIGI DOE,

Jury trial demanded

Defendants.

Defendants MATT BRUCK, as and for his Answer to plaintiff's First Amended Complaint,
filed April 25, 2019 (ecf doc. 22), sets forth the following upon information and belief:

NATURE OF THE ACTION

1) Defendant denies the allegation in contained in paragraph "1" of plaintiff's First Amended Complaint that he employed plaintiff and denies knowledge or information sufficient to form a belief as to the other allegations in said paragraph.

2) Defendant denies the allegation in contained in paragraph "2" of plaintiff's First Amended Complaint that he owns, operates, or controls a Thai restaurant, located at 99 3rd Ave, New York, NY 10003 under the name "Thaimee Table (f/k/a Ngam)" and denies knowledge or information sufficient to form a belief as to the other defendants' relationship to the restaurant.

3) Defendant denies all the allegations addressed to him contained in paragraph "3" of plaintiff's First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants' relationship to the restaurant as to the other defendants' relationship to the restaurant.

4) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “4” of plaintiff’s First Amended Complaint.

5) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “5” of plaintiff’s First Amended Complaint.

6) Defendant denies the allegation in contained in paragraph “6” of plaintiff’s First Amended Complaint that plaintiff worked for him and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant.

7) Defendant denies all the allegations addressed to him contained in paragraph “7” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

8) Defendant denies all the allegations addressed to him contained in paragraph “8” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

9) Defendant denies all the allegations addressed to him contained in paragraph “9” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

10) Defendant denies all the allegations addressed to him contained in paragraph “10” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

11) Defendant denies all the allegations addressed to him contained in paragraph 11” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

12) Defendant denies that he had any legal obligation to defendant as implied in paragraph 12” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

13) Defendant denies that he had any legal obligation to defendant as implied in paragraph “13” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

14) Defendant denies that he had any legal obligation to defendant or other similarly situated employees as implied in paragraph 14” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

15) Defendant denies all the allegations addressed to him contained in paragraph “15” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant or what they did or did not do.

16) As to the paragraph of plaintiff’s First Amended Complaint designated “16”, defendant denies knowledge or information sufficient to form a belief as to what plaintiff seeks and denies any allegations that he owes plaintiff, or other similarly situated persons, any compensation for unpaid work.

17) As to the paragraph of plaintiff’s First Amended Complaint designated “17”, defendant denies knowledge or information sufficient to form a belief as to what plaintiff seeks and denies any allegations that he owes plaintiff, or other similarly situated persons, any compensation for unpaid work.

JURIDICTION AND VENUE

18) As to the paragraph of plaintiff's First Amended Complaint designated "18", defendant admits that the Court has subject matter jurisdiction but denies that he committed any unlawful act alleged by plaintiff or that plaintiff is entitled to any of the requested relief.

19) As to the paragraph of plaintiff's First Amended Complaint designated "19", defendant admits that venue is proper in this district but denies that he owned or operated the restaurant or employed plaintiff and denies that he committed any unlawful act alleged by plaintiff or that plaintiff is entitled to any of the requested relief.

PARTIES

Plaintiff

20) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph "20" of plaintiff's First Amended Complaint.

21) Defendant denies the allegation in contained in paragraph "21" of plaintiff's First Amended Complaint that he employed plaintiff and denies knowledge or information sufficient to form a belief as to as to the other defendants' relationship to the restaurant.

22) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph "22" of plaintiff's First Amended Complaint.

Defendants

23) Defendant denies the allegation in contained in paragraph "23" of plaintiff's First Amended Complaint that he owned, operated, or controled a Thai restaurant, located at 99 3rd Ave, New York, NY 10003 under the name "Thaimee Table (f/k/a Ngam)" and denies knowledge or information sufficient to form a belief as to the other defendants' relationship to the restaurant.

24) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “24” of plaintiff’s First Amended Complaint.

25) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “25” of plaintiff’s First Amended Complaint.

26) . Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “26” of plaintiff’s First Amended Complaint.

27) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “27” of plaintiff’s First Amended Complaint.

28) Defendant denies the allegations in contained in paragraph “28” of plaintiff’s First Amended Complaint.

29) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “29” of plaintiff’s First Amended Complaint.

30) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “30” of plaintiff’s First Amended Complaint.

FACTUAL ALLEGATIONS

Allegations That Defendants Constitute Joint Employers

31) Defendant denies the allegation in contained in paragraph “31” of plaintiff’s First Amended Complaint that he operates a Thai restaurant located in the East Village section of Manhattan in New York City and denies knowledge or information sufficient to form a belief as to the other defendants’ relationship to the restaurant.

32) Defendant denies all the allegations addressed to him contained in paragraph “32” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

33) Defendant denies all the allegations addressed to him contained in paragraph “33” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

34) Defendant denies all the allegations addressed to him contained in paragraph “34” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

35) Defendant denies all the allegations addressed to him contained in paragraph “35” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

36) Defendant denies all the allegations addressed to him contained in paragraph “36” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

37) Defendant denies all the allegations addressed to him contained in paragraph “37” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

38) Defendant denies all the allegations addressed to him contained in paragraph “38” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

39) Defendant denies all the allegations addressed to him contained in paragraph “39” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

40) Defendant denies all the allegations addressed to him contained in paragraph “40” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

41) Defendant denies all the allegations addressed to him contained in paragraph “41” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

Individual Plaintiff

42) Defendant denies all the allegations addressed to him contained in paragraph “42” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

43) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “43” of plaintiff’s First Amended Complaint.

Plaintiff Rodolfo Monter Hernandez

44) Defendant denies all the allegations addressed to him contained in paragraph “44” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

45) Defendant denies all the allegations addressed to him contained in paragraph “45” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

46) Defendant denies all the allegations addressed to him contained in paragraph “46” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

47) Defendant denies all the allegations addressed to him contained in paragraph “47” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

48) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “48” of plaintiff’s First Amended Complaint.

49) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “49” of plaintiff’s First Amended Complaint.

50) Defendant denies all the allegations addressed to him contained in paragraph “50” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

51) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “51” of plaintiff’s First Amended Complaint.

52) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “52” of plaintiff’s First Amended Complaint.

53) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “53” of plaintiff’s First Amended Complaint.

54) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “54” of plaintiff’s First Amended Complaint.

55) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “55” of plaintiff’s First Amended Complaint.

56) Defendant denies all the allegations addressed to him contained in paragraph “56” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

57) Defendant denies all the allegations addressed to him contained in paragraph “57” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

58) Defendant denies all the allegations addressed to him contained in paragraph “58” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

59) Defendant denies all the allegations addressed to him contained in paragraph “59” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

60) Defendant denies all the allegations addressed to him contained in paragraph “60” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

61) Defendant denies all the allegations addressed to him contained in paragraph “61” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

62) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “62” of plaintiff’s First Amended Complaint.

63) Defendant denies all the allegations addressed to him contained in paragraph “63” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

64) Defendant denies all the allegations addressed to him contained in paragraph “64” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

65) Defendant denies all the allegations addressed to him contained in paragraph “65” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

66) Defendant denies all the allegations addressed to him contained in paragraph “66” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

67) Defendant denies all the allegations addressed to him contained in paragraph “67” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

68) Defendant denies all the allegations addressed to him contained in paragraph “68” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

69) Defendant denies all the allegations addressed to him contained in paragraph “69” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

70) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “70” of plaintiff’s First Amended Complaint.

71) Defendant denies all the allegations addressed to him contained in paragraph “71” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

72) Defendant denies all the allegations addressed to him contained in paragraph “72” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

73) Defendant denies all the allegations addressed to him contained in paragraph “73” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

Defendants’ General Employment Practices

74) Defendant denies all the allegations addressed to him contained in paragraph “74” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

75) Defendant denies all the allegations addressed to him contained in paragraph “75” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

76) Defendant denies all the allegations addressed to him contained in paragraph “76” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

77) Defendant denies all the allegations addressed to him contained in paragraph “77” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

78) Defendant denies all the allegations addressed to him contained in paragraph “78” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

79) Defendant denies all the allegations addressed to him contained in paragraph “79” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

80) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “80” of plaintiff’s First Amended Complaint.

81) Defendant denies all the allegations addressed to him contained in paragraph “81” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

82) Defendant denies all the allegations addressed to him contained in paragraph “82” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

83) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph “83” of plaintiff’s First Amended Complaint.

84) Defendant denies all the allegations addressed to him contained in paragraph “84” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

85) Defendant denies all the allegations addressed to him contained in paragraph “85” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

86) Defendant denies all the allegations addressed to him contained in paragraph “86” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

87) Defendant denies all the allegations addressed to him contained in paragraph “87” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

88) Defendant denies all the allegations addressed to him contained in paragraph “88” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

89) Defendant denies all the allegations addressed to him contained in paragraph “89” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

90) Defendant denies all the allegations addressed to him contained in paragraph “90” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

91) Defendant denies all the allegations addressed to him contained in paragraph “91” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

92) Defendant denies all the allegations addressed to him contained in paragraph “92” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

93) Defendant denies all the allegations addressed to him contained in paragraph “93” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

94) Defendant denies all the allegations addressed to him contained in paragraph “94” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

95) Defendant denies all the allegations addressed to him contained in paragraph “95” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

96) Defendant denies all the allegations addressed to him contained in paragraph “96” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

97) Defendant denies all the allegations addressed to him contained in paragraph “97” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

98) Defendant denies all the allegations addressed to him contained in paragraph “98” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

FLSA COLLECTIVE ACTION ALLEGATIONS

99) Defendant denies all the allegations addressed to him contained in paragraph “99” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

100) Defendant denies all the allegations addressed to him contained in paragraph “100” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

101) Defendant denies all the allegations addressed to him contained in paragraph “101” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**FIRST CAUSE OF ACTION
VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA**

102) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “102” of the First Amended Complaint with the same force and effect as if fully set forth herein.

103) Defendant denies all the allegations addressed to him contained in paragraph “103” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

104) Defendant denies all the allegations addressed to him contained in paragraph “104” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

105) Defendant denies all the allegations addressed to him contained in paragraph “105” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

106) Defendant denies all the allegations addressed to him contained in paragraph “106” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

107) Defendant denies all the allegations addressed to him contained in paragraph “107” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

108) Defendant denies all the allegations addressed to him contained in paragraph “108” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**SECOND CAUSE OF ACTION
VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA**

109) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “109” of the First Amended Complaint with the same force and effect as if fully set forth herein.

110) Defendant denies all the allegations addressed to him contained in paragraph “110” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

111) Defendant denies all the allegations addressed to him contained in paragraph “111” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

112) Defendant denies all the allegations addressed to him contained in paragraph “112” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK MINIMUM WAGE ACT**

113) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “113” of the First Amended Complaint with the same force and effect as if fully set forth herein.

114) Defendant denies all the allegations addressed to him contained in paragraph “114” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

115) Defendant denies all the allegations addressed to him contained in paragraph “115” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

116) Defendant denies all the allegations addressed to him contained in paragraph “116” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

117) Defendant denies all the allegations addressed to him contained in paragraph “117” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE OVERTIME PROVISIONS
OF THE NEW YORK STATE LABOR LAW**

118) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “118” of the First Amended Complaint with the same force and effect as if fully set forth herein.

119) Defendant denies all the allegations addressed to him contained in paragraph “119” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

120) Defendant denies all the allegations addressed to him contained in paragraph “120” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

121) Defendant denies all the allegations addressed to him contained in paragraph “121” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**FIFTH CAUSE OF ACTION
VIOLATION OF THE SPREAD OF HOURS WAGE ORDER
OF THE NEW YORK COMMISSIONER OF LABOR**

122) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “122” of the First Amended Complaint with the same force and effect as if fully set forth herein.

123) Defendant denies all the allegations addressed to him contained in paragraph “123” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

124) Defendant denies all the allegations addressed to him contained in paragraph “124” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

125) Defendant denies all the allegations addressed to him contained in paragraph “125” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**SIXTH CAUSE OF ACTION
VIOLATION OF THE NOTICE AND RECORDKEEPING
REQUIREMENTS OF THE NEW YORK LABOR LAW**

126) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “126” of the First Amended Complaint with the same force and effect as if fully set forth herein.

127) Defendant denies all the allegations addressed to him contained in paragraph “127” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

128) Defendant denies all the allegations addressed to him contained in paragraph “128” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**SEVENTH CAUSE OF ACTION
VIOLATION OF THE WAGE STATEMENT PROVISIONS
OF THE NEW YORK LABOR LAW**

129) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “129” of the First Amended Complaint with the same force and effect as if fully set forth herein.

130) Defendant denies all the allegations addressed to him contained in paragraph “130” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

131) Defendant denies all the allegations addressed to him contained in paragraph “131” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**EIGHTH CAUSE OF ACTION
RECOVERY OF EQUIPMENT COSTS**

132) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “132” of the First Amended Complaint with the same force and effect as if fully set forth herein.

133) Defendant denies all the allegations addressed to him contained in paragraph “133” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

134) Defendant denies all the allegations addressed to him contained in paragraph “134” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

**NINTH CAUSE OF ACTION
VIOLATION OF THE TIMELY PAYMENT PROVISIONS
OF THE NEW YORK LABOR LAW**

135) Defendant repeats, reiterates and realleges each and every answer to the allegations set forth above in response to paragraph “135” of the First Amended Complaint with the same force and effect as if fully set forth herein.

136) Defendant denies all the allegations addressed to him contained in paragraph “136” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

137) Defendant denies all the allegations addressed to him contained in paragraph “137” of plaintiff’s First Amended Complaint and denies knowledge or information sufficient to form a belief as to the allegations against the other defendants.

WHEREFORE, defendant requests that the Court deny all relief sought by plaintiff in his Prayer for Relief and award defendant the relief set forth in the Conclusion below.

AFFIRMATIVE DEFENSES

Defendant alleges the following separate and independent affirmative defenses to the First Amended Complaint, without assuming the burden of proof where such burden is otherwise on plaintiff pursuant to applicable substantive or procedural law. Defendant reserves the right to amend or supplement his affirmative defenses and assert counterclaims that may become known during the course of discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because the claims are time-barred under the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Any claim for injunctive and other equitable relief is barred because plaintiff and/or individuals he purports to represent have an adequate and complete remedy at law.

FOURTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because the claims are time-barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because the claims contained therein are barred by the equitable doctrines of waiver, unclean hands, and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because the claims contained therein are barred by the doctrine of avoidable consequences.

SEVENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because plaintiff has failed to mitigate any alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because plaintiff has failed to comply with all procedural requirements for maintaining this action.

NINTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because plaintiff has waived the right, if any, to pursue his claims by reason of his own actions, omissions, and course of conduct, including but not limited to failure to comply with applicable employment policies and procedures.

TENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because plaintiff is exempt from coverage under the Fair Labor Standards Act, and therefore not entitled to overtime compensation.

ELEVENTH AFFIRMATIVE DEFENSE

The First Amened Complaint fails, in whole or in part, because plaintiff misperformed his respective duties and/or failed to perform those duties which defendants realistically expected him to perform.

TWELFTH AFFIRMATIVE DEFENSE

The First Amendded Complaint fails, in whole or in part, because the claims contained therein are barred by the wage and hour laws' *de minimis* exception.

THIRTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because none of the alleged violations were willful. Defendant's actions or omissions alleged by plaintiff were reasonable and not undertaken with reckless disregard as to whether such acts or omissions were in violation of law.

FOURTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because, if liability is established, defendant acted at all times in good faith and had reasonable grounds for believing that his conduct complied at all times with applicable laws and regulations, including reliance upon written administrative regulations, orders, rulings, approvals, interpretations, or written or unwritten administrative practices of the United States Department of Labor. Accordingly, no liquidated damages should be awarded because any alleged violation was not willful.

FIFTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because plaintiff may not recover liquidated damages and prejudgment interest.

SIXTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because some or all of the remedies sought by plaintiff are not recoverable under the applicable laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, because, to the extent defendant is found to bear any liability toward plaintiff, defendant will be entitled to a credit toward any payment obligation by prior compensation and/or other additional compensation and/or benefits afforded to plaintiff(s).

EIGHTEENTH AFFIRMATIVE DEFENSE

The damages claimed by plaintiff are barred to the extent they are speculative in nature.

NINETEENTH AFFIRMATIVE DEFENSE

Some or all of the time allegedly worked is not compensable pursuant to the provisions of the FLSA or the Portal-to-Portal Act of 1947.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff failed to obtain personal jurisdiction over defendants, MATT BRUCK, due to his failure to properly serve him with the summons and amended first complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, under the doctrine of *res judicata*, collateral estoppel, merger and bar, compromise, and similar doctrines.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant was neither an owner nor an employer.

CROSS CLAIM AGAINST ALL OTHER DEFENDANTS

If the plaintiff was caused to sustain any damages as alleged in the Complaint, all of which this answering defendant denies, said damages were caused by the negligence, culpable conduct and/or wrongful acts of the co-defendants, their agents, servants and/or employees, and not through the acts of negligence, culpable conduct or wrongful acts on the part of this answering defendant.

By reason of the foregoing, this answering defendant is entitled to judgment over and against the co-defendants for indemnification, be it contractual and/or common law, as to any damages, losses, fines, penalties, liabilities, judgments, costs and expenses of any kind or nature whatsoever (including but not limited to interest, court costs and attorney's fees), or contribution, be it contractual and/or common law, in the amount of the excess paid by this answering defendant over and above its equitable share of the judgment, verdict and/or recover, as determined in accordance with the relative culpability of each party liable for contribution.

CONCLUSION

1. That the Court decline to exercise ancillary jurisdiction;
2. That the Complaint be dismissed with prejudice, or alternatively that judgment be entered in favor of defendant;
3. That defendant be awarded costs, attorneys' fees, and expenses to the maximum extent allowed by law; and
4. That the Court grant defendant such other relief as may be deemed just and proper.

Defendant demands a jury trial as to all issues.

Dated: New York, New York
November 19, 2020

Yours, etc.,

Eric E. Rothstein
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Case No.: 19-cv-01257-ALC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RODOLFO MONTER HERNANDEZ, individually and on
behalf others similarly situated,

Plaintiff,

-against-

99 THAI PLAYGROUND LLC (D/B/A THAIMEE TABLE (F/K/A NGAM)), INSPIRED
HOSPITALITY MANAGEMENT LLC (D/B/A THAIMEE TABLE (F/K/A NGAM)),
NGAMPROM THAIMEE (AKA HONG), MATT BRUCK, ANDREW PIRGOUSIS, CHAI
THAIMEE, and LUIGI DOE,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT WITH CROSS-CLAIM

ROTHSTEIN LAW PLLC
Attorneys for **Defendant MATT BUCK**
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212-577-9797
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CERTIFICATION BY ATTORNEY:

The undersigned, an attorney duly admitted to practice in the Courts of the State of New York,
shows:

I certify that, to the best of my knowledge, information and belief formed after an inquiry
reasonable under the circumstance, the presentation of the paper(s) listed above or contention(s)
herein are not frivolous as defined in §130-1.1(c).

Eric E. Rothstein